IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.515 OF 2001.

Shankar Rajoba Chabukswar
Deceased by his heirs :-
Smt.Shalini Shankar Chabukswar
and ors. : Appellants.

versus

Sambhaji Ananda Sawant & Anr. : Respondents.

Mr.T.S.Ingale for the appellants.
Mr.A.A.Kumbhakoni for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 23rd June 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondents. Appellant is the original plaintiff. He filed a suit for permanent injunction. Respondents, who were purchasers of undivided share from the other brothers of the

plaintiff, made a counter claim for partition of their share which they had purchased from the joint owners or co-owners. The trial Court decreed the suit of the plaintiff partly and, the defendants were directed not to obstruct the plaintiff possession and cultivation till the actual partition and delivery of possession and, the defendants' counter claim was decreed to the effect that they were to be entitled to 3/4th share of the suit land on partition to be effected by the Collector.

2. The plaintiff preferred an appeal against that decreed. The appeal was dismissed. Hence this appeal. The counsel for the appellant contended that if the suit was filed by the plaintiff for injunction, then the defendants could not have made a counter claim on the basis of the sale deed. There is no legal basis for this submission. As the purchasers of joint property, the defendants could have filed separate suit. But when the suit came to be filed for injunction in respect of the very same property, there was no bar preventing them from doing so.

3. Second contention of the counsel for the appellant was that the brothers, from whom the defendants had purchased the property, were not joined in the counter claim for partition. That was also not required to be done by the defendants. As the purchasers, they had a right to claim partition without joining their vendors. Hence there is no merit in this appeal. It is dismissed. Ad interim order, if any, stands vacated.

[D.G.DESHPANDE]

23/06/2005 JUDGE.